

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT NO. _____; P1-XXXXX-IGA

This Intergovernmental Agreement (“this Agreement”) is between the CITY OF PORTLAND, OREGON (“CITY”), and Peninsula Drainage District #1 (“PEN 1”) in an amount not to exceed \$_____ for Fiscal Year 2023-24 through Fiscal Year 2025-26 to design and permit a full replacement of the Portland International Raceway (PIR) Pump Station.

RECITALS:

1. PEN 1 provides flood risk reduction and drainage services for lands within its jurisdiction by operating and maintaining levees, pump stations, and other drainage works as authorized under ORS Chapter 547.
2. Approximately 94% of PEN 1’s 995 acres are public lands including the Portland International Raceway, Heron Lakes Golf Course, the Portland Expo Center, and the Vanport Wetland, with small businesses making up the remaining 6%. The City owns 77% of the land in the district.
3. PEN 1’s primary source of revenue is through property assessments levied on property owners based on property size. Between the land zoned as open space, and the number of properties that are already under Measure 5 tax compression, PEN 1 is unable to assess enough revenue to fully fund a Capital Improvement Plan to replace aging assets.
4. PIR Pump Station is managed by PEN 1. As a system of assets, the pump station receives stormwater from throughout the district and pumps excess stormwater through its discharge pipes into the Columbia Slough. Without the pump station system operating as intended, undesirable flooding would occur at PIR and other public assets, including roadways.
5. PIR Pump Station is at the end of its useful life. The structure and pumps were built in the 1950s. The asset needs full replacement to continue to provide flood management services.
6. City of Portland applied for and received grants from Federal Emergency Management Agency (FEMA) and State of Oregon totaling \$2,331,000.00. These funds will pay for the entire project of designing and permitting the new pump station.
7. The City will have no future liability for this asset once the constructed facility meets all testing criteria; it is operational; and sufficient easement(s) or other real estate agreements are recorded to support PEN 1’s long-term access, operations, maintenance, and capital improvement needs of the PIR Pump Station. At that time, PEN 1 will assume ownership and responsibility for the new pump station.

EXHIBIT A

8. CITY now desires to enter into an Intergovernmental Agreement (IGA) with PEN 1 to complete the pump station design and permitting work. This IGA will compensate PEN 1 for the work outlined in the Articles listed herein.

THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

ARTICLE I - SCOPE OF WORK/OUTCOME MEASURES

PEN 1 agrees to continue to provide all services and deliverables outlined in EXHIBIT A: Scope of Work, EXHIBIT B: PIR Pump Station Design Project Budget hereto, which by this reference are incorporated herein and made a part hereof. Scope of Work and deliverables will be completed as detailed in EXHIBIT C: Project Schedule.

ARTICLE II - AGREEMENT PERIOD

This Agreement shall become effective on the date of last signature and will terminate on June 30, 2027, unless extended in conformance with Article V, Section G, or terminated in conformance with Article V, Sections A-E. Expenses incurred starting July 1, 2023, are eligible expenses for the IGA funds reimbursement.

ARTICLE III - SPECIFIC CONDITIONS OF THE AGREEMENT

- A. Records: PEN 1 shall maintain all books, general organizational and administrative information, documents, papers, and records of PEN 1 that are related to this Agreement for ten (10) years after CITY makes final payment, or the termination date of this Agreement, whichever is later. PEN 1 shall provide CITY prompt access to these records upon request and permit copying as CITY may require.
- B. CITY Contract Manager: CITY hereby appoints James Allison to act as its Project Manager with regard to this Agreement. CITY may, from time to time, designate another person to act as the City Contract Manager and will inform PEN 1 in writing of any change in Project Manager.

James Allison
City of Portland, BES
1120 SW 5th Ave., Rm 613
Portland, OR 97204
phone: 503-823-4921
email: james.allison@portlandoregon.gov

- C. PEN 1 Project Manager: PEN 1 hereby appoints Matt Burlin to act as its Project Manager regarding this Agreement. PEN 1 may, from time to time, designate another person to act as the PEN 1 Project Manager and

EXHIBIT A

will inform CITY in writing of any change in Project Manager.

Matt Burlin
Peninsula Drainage District #1
1880 NE Elrod Drive
Portland OR 97211
phone: 971-378-0526
email: mburlin@mcdd.org

- D. Billings/Invoices/Payment: CITY's Contract Manager is authorized to approve work, billings, and invoices submitted pursuant to this award and to carry out all other CITY actions referred to herein in accordance with this Agreement. **The Final Invoice is due no later than July 30th, 2027.**

ARTICLE IV - PAYMENTS

- A. The not-to-exceed amount of this Agreement is \$2,331,000, services and deliverables outlined in EXHIBIT A Scope of work. The payments will be made on a reimbursement basis and full documentation of expenses will be required with the invoice submittals. A one-time, mobilization/startup payment will be made at the beginning of the project. This mobilization/startup amount is not to exceed \$116,550.00 (5%).
- B. Invoices will be submitted on a monthly basis within 30 days following when expenses are incurred. The first invoice will include the mobilization/startup amount specified in Section IV.A. The CITY will make payments within 30 days of invoice receipt by the CITY.
- C. If for any reason PEN 1 receives a payment under this Agreement and does not use funds, provide required services, or take any actions required by this Agreement, CITY may, at its option, terminate, reduce or suspend any funds that have not been paid and may, at its option, require PEN 1 to immediately refund to CITY the amount improperly expended or received by PEN 1.
- D. Payments under this Agreement may be used only to provide the services or take the actions consistent with this Agreement and shall not be used for any other purpose.
- E. If, for any reason, PEN 1's anticipated services or actions are terminated, discontinued, or interrupted, CITY's payment of funds under this Agreement may be terminated, suspended, or reduced.
- F. PEN 1 will keep vendor receipts and evidence of payment for materials and services and time records and evidence of payment for program wages, salaries, and benefits, and PEN 1 services. All such receipts and evidence of payments will promptly be made available to the Contract Manager or other designated persons, upon request.
- G. Prevailing wages. State of Oregon, Bureau of Labor and Industries (BOLI) wage rates are required for certain contracts that total \$50,000

EXHIBIT A

and above. If PEN 1's project is subject to the prevailing wage requirements, PEN 1 will comply with the prevailing wage requirements of ORS 279C.800 through 279C.870 and any other applicable prevailing wage requirements contained in ORS 279C, Oregon administrative rules, or city code.

- H. Prevailing wage indemnity. PEN 1 AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY AND ITS EMPLOYEES, OFFICERS, AND AGENTS HARMLESS FROM AND AGAINST ANY CLAIM, SUIT, OR ACTION, INCLUDING ADMINISTRATIVE ACTIONS, THAT ARISE OUT OF PEN 1'S FAILURE TO COMPLY WITH ORS 279C.800 TO 279C.870 AND ANY APPLICABLE ADMINISTRATIVE RULES OR POLICIES.

ARTICLE V - GENERAL AGREEMENT PROVISIONS

- A. Cause for Termination; Cure. It shall be a material breach and cause for termination of this Agreement if PEN 1 uses award funds outside of the scope of this Agreement, or if PEN 1 fails to comply with any other term or condition or to perform any obligations under this Agreement within 30 days after written notice from CITY. If the breach is of such nature that it cannot be completely remedied within the 30-day cure period, PEN 1 shall commence cure within the 30 days, notify CITY of PEN 1's steps for cure and estimated time table for full correction and compliance, proceed with diligence and good faith to correct any failure or noncompliance, and obtain written consent from CITY for a reasonable extension of the cure period.
- B. No Payment or Further Services Authorized During Cure Period. During the cure period, CITY is under no obligation to continue providing additional funds, notwithstanding any payment schedule indicated in this Agreement. PEN 1 shall not perform services or take actions that would require CITY to pay additional funds to PEN 1. PEN 1 shall not spend unused award funds and such unused funds shall be deemed held in trust for CITY. PEN 1 shall be solely responsible for any expenses associated with cure of its noncompliance or failure to perform.
- C. Termination for Cause. Termination for cause based on PEN 1's misuse of funds shall be effective upon notice of termination. Termination for cause based on failure to comply or perform other obligations shall be effective at the end of the 30-day period unless a written extension of cure period is granted by CITY. PEN 1 shall return all award funds that had not been expended as of the date of the termination notice. All finished or unfinished documents, data, studies, and reports prepared by PEN 1 under this Agreement shall, at the option of CITY, become the property of CITY; and PEN 1 may be entitled to receive just and equitable compensation for any satisfactory work completed on such documents up until the time of notice of termination, in a sum not to exceed the award funds already expended.

EXHIBIT A

- D. Penalty for Termination for Cause. If this Agreement is terminated for cause, CITY, at its sole discretion, may seek repayment of any or all award funds tendered under this Agreement, and decline to approve or award future funding requests to PEN 1.
- E. Termination by Agreement or for Convenience of City. CITY and PEN 1 may terminate this Agreement at any time by mutual written agreement. Alternatively, CITY may, upon 30 days' written notice, terminate this Agreement for any reason deemed appropriate in its sole discretion. If this Agreement is terminated as provided in this paragraph, PEN 1 shall return any award funds that would have been used to provide services after the effective date of termination. Unless the parties agree otherwise, PEN 1 shall finish any work and services covered by any award funds already paid and shall not commence any new work or services which would require payment from any unused award funds.
- F. Changes in Anticipated Services. If, for any reason, PEN 1's anticipated services or actions are terminated, discontinued or interrupted, CITY's payment of award funds may be terminated, suspended or reduced. PEN 1 shall immediately refund to CITY any unexpended funds received by PEN 1.
- G. Amendment. The CITY Contract Manager is authorized to execute amendments to the scope of the services or the terms and conditions of this Agreement, provided the changes do not increase CITY's financial risk. Amendments to this Agreement, including any increase or decrease in the award amount, must be in writing and executed by the authorized representatives of the parties and approved as to form by the City Attorney.
- H. Non-discrimination; Civil Rights. In carrying out activities under this Agreement, PEN 1 shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. PEN 1 shall take actions to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Actions shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PEN 1 shall post in conspicuous places, available to employees and applicants for employment, notices, which state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. PEN 1 shall incorporate the foregoing requirements of this section in all other agreements for work funded under this Agreement, except agreements governed by Section 104 of Executive Order 11246.
- I. Audit. CITY, either directly or through a designated representative, may conduct financial or performance audit of the billings and services under this Agreement or PEN 1 records at any time during this Agreement and during the 10-year period. As applicable, audits will be conducted in accordance with generally-

EXHIBIT A

accepted auditing standards as promulgated in *Government Auditing Standards* by the Comptroller General of the United States General Accounting Office. If an audit discloses that payments to PEN 1 exceeded the amount to which PEN 1 was entitled, then PEN 1 shall repay the amount of the excess to CITY.

- J. Indemnification. PEN 1 shall defend, indemnify, and hold CITY and its officers, agents, and employees harmless from and against all claims, demands, actions, and suits (including all costs) brought against any of them arising from actions or omissions of PEN 1 and/or its contractors in the performance of this Agreement.
- K. Insurance. PEN 1 shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. CITY reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement.
1. Workers' Compensation Insurance. PEN 1, its contractors, and all employers working under this Agreement shall comply with ORS Chapter 656 and as it may be amended from time to time. Unless exempt under ORS Chapter 656, PEN 1, its contractors, and any employers working under this Agreement shall maintain coverage for all subject workers for the duration of this Agreement.

In the event worker's compensation insurance coverage is due to expire during the term of this Agreement for any employers working under this agreement, PEN 1 agrees to require timely renewal of that insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and PEN 1 agrees to provide the CITY such further certification of worker's compensation insurance as renewals of said insurance occur.
 2. Commercial General Liability Insurance:
PEN 1 shall maintain commercial general liability and property damage insurance that protects PEN 1 and the CITY and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from PEN 1's work under this IGA. The insurance shall provide coverage for not less than \$2,000,000 per occurrence.
 3. Automobile Liability Insurance: PEN 1 shall have automobile liability insurance with coverage of not less than \$2,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned auto. This coverage may be combined with the commercial general liability insurance policy.

EXHIBIT A

4. Additional Insured: The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation where applicable, shall be without prejudice to coverage otherwise existing, and shall name the City of Portland and its bureaus/divisions, officers, agents and employees as Additional Insureds, with respect to the PEN 1's or its contractor's activities to be performed or services to be provided. Grantee shall provide proof of additional insured coverage in the form of an additional insured endorsement form or a policy coverage document acceptable to City. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.
- L. PEN 1's Contractor; Non-Assignment. If PEN 1 utilizes contractors to complete its work under this Agreement, in whole or in part, PEN 1 shall require its contractors to agree, as to the portion contracted, to fulfill all obligations of this Agreement as specified herein. However, PEN 1 shall remain obligated for full performance hereunder, and CITY shall incur no obligation other than its obligations to PEN 1 hereunder. This Agreement shall not be assigned or transferred in whole or in part or any right or obligation hereunder, without prior written approval of CITY.
- M. Independent Contractor Status. PEN 1 and its contractors and employees are not employees of CITY and are not eligible for any benefits through CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits. PEN 1 will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder.
- N. Conflict of Interest. No CITY officer or employee, during his or her tenure or for two years thereafter, shall have any interest, direct or indirect, in the Agreement or the proceeds thereof. CITY officer or employee who selected PEN 1, participated in the award of this Agreement or managed this Agreement shall not seek the promise of employment from PEN 1 or be employed by PEN 1 during the term of the Agreement, unless waiver is obtained from CITY in writing.
- O. Oregon Laws and Forum. This Agreement shall be construed according to the laws of the State of Oregon without regard to its provisions regarding conflicts of law. Any litigation between CITY and PEN 1 arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

EXHIBIT A

- P. Compliance with Law. PEN 1 and all persons performing work under this Agreement shall comply with all applicable federal, state, and local laws and regulations, including reporting to and payment of all applicable federal, state and local taxes and filing of business license. If PEN 1 is a 501(c)(3) organization, PEN 1 shall maintain its nonprofit and tax-exempt status during this Agreement. PEN 1 shall be Equal Employment Opportunity (EEO) and Equal Benefits (EB) certified by CITY to be eligible to receive award funds.
- Q. Independent Financial Audits/Reviews. If PEN 1 receives \$300,000 or more in CITY funding, in any program year, it is required to obtain an independent audit of the CITY-funded program(s).
- R. Severability. CITY and PEN 1 agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- S. Merger. This Agreement contains the entire agreement between CITY and PEN 1 and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Agreement that are not contained herein.
- T. Program and Fiscal Monitoring. CITY shall monitor on an as-needed basis to assure compliance with this Agreement. Monitoring may include, but is not limited to, on-site visits, telephone interviews and review of required reports and will cover both programmatic and fiscal aspects of this Agreement. The frequency and level of monitoring will be determined by the CITY Contract Manager. Notwithstanding such monitoring or lack thereof, PEN 1 remains fully responsible for performing the work, services or obligations required by this Agreement in accordance with its terms and conditions.
- U. Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement and may only be enforced by the parties.
- V. Electronic Transaction; Counterparts. The parties agree that they may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures. This Agreement, and any amendment, may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- W. Successors in Interest. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.

EXHIBIT A

- X. NOTICE: Notices to PEN 1 under this Agreement shall be sent to PEN 1 at the following address:

Jim Middaugh, Executive Director
Peninsula Drainage District # 1
1880 NE Elrod
Drive, Portland
OR 97211
Phone: 971-409-9459
email: jmiddaugh@mcdd.org

NOTICE: Notices to CITY under this Agreement shall be sent to CITY at the following address:

James Allison
City of Portland
1120 SW 5th Ave.
Portland, OR 97204
Ph: 503-522-4302
email: james.allison@portlandoregon.gov

SIGNATURES:

CITY OF PORTLAND

PENINSULA DRAINAGE DISTRICT NO. 1

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

EXHIBIT A: PIR Pump Station Design- Scope of Work

This project focuses on completing all necessary planning, design, and permitting required to prepare application materials to submit for a future FEMA grant “Project” (HMGP) or “Mitigation Project” (BRIC) by October 2025 to fund construction of a new PIR Pump Station. More specifically, this includes the following: grant management; project management, including procurement and contracting; alternatives analysis and feasibility studies; EHP planning and hazard mitigation project planning; data collection and rectification; engineering design and permitting to 100% design; cost and schedule planning, including incorporation of Strategic Funds Management (SFM); real estate coordination; cost-share coordination for future construction funding; Benefit Cost Analysis (BCA) for Construction; and preparation and submission of all other required materials for a grant application for Construction. Responsible parties are noted in **bold text** below.

Grant management: (City of Portland, with support from PEN 1)

- Financial management of grant funds.
- Periodic reporting and final reporting to FEMA.
- Completion of all required grant paperwork in a timely manner.
- Fulfillment of all other grant requirements, as dictated in grant terms.
- Coordination between the City of Portland and PEN 1 for project management as it relates to fulfilling grant requirements.
- *Deliverables: Required documentation submitted on the timeline specified by the grant.*

Task 1: Project management: (PEN 1)

- Oversight of scope of work, budgets, and schedule will be done with a project team that includes subject matter experts in engineering, operations & maintenance, environment, permitting, procurement, communications, and other pertinent fields. **(PEN 1)**
- Project planning, including charter and work plan **(PEN 1 with support from City of Portland)**
- Procurement and contracting **(PEN 1)**
- Conduct meetings, outreach, and coordination with community stakeholders regarding project plans, expectations, plans for future construction, and potential impacts in the area. **(City of Portland, PEN 1)**
- Review SFM with FEMA and Oregon Emergency Management to understand the legislative requirements regarding expending obligated funds for projects, incorporating as appropriate to this project and future construction project planning **(City of Portland, PEN 1)**
- Project accounting and invoicing
- *Deliverables: Signed contracts with design and BCA consultants; project scope, schedule, budget, charter; and monthly invoices*

Task 2: Engineering pre-design, design and permitting (City of Portland, PEN 1, Design Consultant Team TBD)

- Alternatives analysis of design solutions
- 30% Design Phase
- 60% Design Phase
- 90% Design Phase
- 100% Design Phase
- Perform professional cost and schedule estimation services throughout design process to aid in creating consistency for project budgeting and scheduling for future construction “Project”/ “Mitigation Project”.
- *Deliverables: Plans, specifications, and construction cost estimates for each design milestone listed above; alternatives analysis report, Basis of Design report, approved permits; supplemental documents such as site survey, geotechnical assessments including seismic considerations, and other technical reports necessary to bid the project for Construction.*

Task 3: Grant Application for Stage 2 – Construction:

- Use staff resources to develop a cost-share strategy and identify potential match funding for future construction funding; **(City of Portland, PEN 1)**
- Rectify data consistency needs for future project application categories, such as Environmental Historical Preservation (EHP) compliance, cost-sharing mechanisms, and work schedules. **(PEN 1 lead; City of Portland support)**
- Real estate coordination for all necessary transactions, easements, and clarifications related to construction, operations & maintenance, access, and ownership of facilities and land. **(City of Portland, PEN 1, Outside Legal Counsel)**
- Benefit Cost Analysis, including HAZUS modeling, for Construction phase **(BCA Consultant – TBD)**
- Document EHP (environmental, historical preservation, and permitting considerations) compliance for Construction phase of project **(City of Portland, PEN 1)**
- Preparation and submission of all other required materials for grant sub-application for Construction. **(PEN 1 lead; City of Portland support)**
- *Deliverables: environment, cultural resources, and historical preservation report(s); recorded real estate agreements; BCA report; submitted grant sub-application for Construction*

In consultation with the City of Portland, PEN 1 will manage the solicitation and contract for consultant services in a manner that meets FEMA grant requirements.

EXHIBIT B – PIR PUMP STATION DESIGN BUDGET

	FY 2023	FY 2024	FY 2025	FY 2026	Total
Design	\$0	\$770,000	\$727,500	\$392,500	\$1,890,000
BCA & Data Collection	\$0	\$20,000	\$30,000	\$25,000	\$75,000
Real Estate Support	\$0	\$15,000	\$10,000	\$5,000	\$30,000
PEN 1 Project Mgmt Costs	\$10,000	\$65,000	\$92,500	\$57,500	\$225,000
Pre-Award Grant Mgmt Costs – PEN 1	\$30,000	\$0	\$0	\$0	\$30,000
Post-Award Grant Mgmt Costs - City of Portland	\$10,000	\$27,750	\$27,750	\$15,500	\$81,000
Total	\$50,000	\$897,750	\$887,750	\$495,500	\$2,331,000

EXHIBIT C – PROJECT SCHEDULE

